CIVIL WRIT JURISDICTION CASE No.4926 OF 1989

SMT. ATTAR DEVI, wife of Bhanu Roy, resident of village – Mahiya Malpur, Police Station – Patelpur, District – Vaishali, at present residing at village – Udapatti, Police Station Sarairanjan, District – Samastipur.

----------(Petitioner)

Versus

1. The State of Bihar
2. The Collector, Samastipur
3. Mahendra Rai, son of Paltan Roy, resident of village – Rahimpur Rudauli, Police Station – Samastipur, District – Samastipur.
4. Srichand Rai, son of late Mani Rai, resident of village – Udapatti, Police Station – Sarairanjan, District – Samastipur.

----------(Respondents)

For The Petitioner : Mr. Ram Sumiran Singh Adv.
For the State : Mr. Amresh Kumar Sinha JC to G.P. 15
For The Respondent No.3: Mr. Binod Kr. Ambastha

P R E S E N T

THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

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A.K. Tripathi, J. Heard learned counsel for the petitioner and learned counsel for the State.

Vide order dated 11.04.1989 contained in Annexure – 4, Collector, Samastipur, exercised the power under section 32 of the Consolidation Act and has declared the sale deed executed to be illegal as well as imposed a fine of Rs. 250/- (Two Hundred Fifty only) since the Kewala was executed in breach of section 5 of the Act and without obtaining the requisite permission of the Consolidation Officer under section 6.

The short & precise emphasized submission of learned counsel for the petitioner is that he has sought an information vide an application from the competent authority.

The information shows that the land in question is a Chak out land and further it is a homestead land, therefore, there was no breach committed as alleged. It is further urged that there is neither any finding nor any discussion on this issue whether the land was a homestead land and was chak out from the chak proceeding in this background.

Perusal of the impugned order does enforce the submission of the learned counsel for the petitioner. Even the counter affidavit filed on behalf of the State supports the fact as per Annexure - 2.

With the above stated position the impugned order contained in Annexure – 4 is fit to be interfered with. The writ application is allowed and Annexure – 4 stands quashed.

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Patna High Court
The 24th Day of
November, 2008
NAFR/AFR,
Rajeev/

(Ajay Kumar Tripathi, J.)